IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

OP.No. 37975 of 2001(S)

OA.756/2001 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:

P. BALAKRISHNAN, AGED 60 YEARS, S/O. LATE P. THUPRAN, (RETIRED SENIOR SECTION ENGINEER (LOCO),BILASPUR RAILWAY STATION, SOUTH EASTERN RAILWAY, RESIDING AT CHAMAYIL HOUSE, POST AMNNUR, VIA. KADALUNDI, CALICUT DIST.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.MANNATIL KUMAR

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI,

2. THE GENERAL MANAGER, SOUTH EASTERN RAILWAY, HEAD QUARTERS OFFICE, GARDEN REACH, CALCUTTA.

3. THE CHIEF MECHANICAL ENGINEER, SOUTH EASTERN RAILWAY HEADQUARTERS OFFICE, GARDEN REACH CALCUTTA.

4. THE CHIEF PRSONNEL OFFICER, DO.

5. THE SENIOR DIVISIONAL MECHANICAL ENGINEER, BILASPUR DIVISION, BILASPUR,.

6. THE ADDL. DIVISIONAL RAILWAY MANAGER, DO.

7. THE CAT,. ERNAKULAM BENCH, THROUGH ITS REGISTRAR.

BY ADV. SRI.R.SATISH KUMAR
SC, SOUTH EASTERN RAILWAYS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/10/2007 , THE COURT ON 24/10/2007 DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE CLARIFICATION AS PUBLISHED IN THE RAILWAY SEVANTS (DISCIPLINE & APPEAL) RULES, 1968

EXT.P2-TRUE COPY OF THE OA 756/2001 FILED BY THE PETITIONER

EXT.P3-TRUE COPY OF M.A. NO.1034/01 FILED BY THE PETITIONER

EXT.P4-TRUE COPY OF ORDER IN DO.

EXT.P5-TRUE COPY OF ORDER IN OA 756/2001 DT.23.8.2001 OF CAT

// TRUE COPY //

P.S. TO JUDGE

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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O.P.NO.37975 of 2001-S

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Dated this the 24th day of October, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioner was a Chief Crew Controller (Loco) working in the South Eastern Railways. He was compulsorily retired from service as a punishment, on 7.1.1999. The allegation against him was that he issued passes to certain workmen to travel from their training centre to their parent units to collect their salary. Against the order of compulsory retirement dated 7.1.1999, he filed an appeal before the statutory appellate authority. The said appeal was dismissed on 25.3.1999. He filed a statutory review against that order. It was also dismissed on 22.9.1999. Whether there is any further statutory remedy, is a disputed question. But petitioner submits, he bonafide thought that he has got a further right of review/revision in the light of Ext.P1 rules and he filed a review/revision before the General Manager of the Railways concerned, on 7.12.1999. No action was taken on that application. Normally he has to wait for six months from the date of filing of that application and has to move the Central Administrative Tribunal within one year thereafter. In other words,

he should have moved the Tribunal within 18 months of filing of the application. But he filed the O.A. only on 13.7.2001. So, there was a delay of 45 days in filing the O.A., according to the petitioner. The Tribunal considered the application for condonation of delay and rejected it by Ext.P4 order. The Tribunal took the view that the second review/revision is not maintainable and therefore, he should have approached the Tribunal within one year of the first review order dated 22.9.1999. So, there was a delay of about 10 months, according to the Tribunal. It was also held that the delay is not satisfactorily explained. Based on the above findings, the Tribunal dismissed the application to condone delay. Consequently, the O.A. itself was dismissed by Ext.P5 order. So, this writ petition is filed challenging Exts.P4 and P5.

2. The respondents did not file any counter affidavit. We heard learned counsel on both sides. We notice that a major penalty has been imposed on the petitioner and he has got substantial contentions against the same. So, the Tribunal should have considered his application on merits. The petitioner, on the basis of the advice received by him, filed a second review/revision. If the said second review/revision is maintainable, there is only about 45 days delay in filing the application. Even assuming the said view of the petitioner is not correct, still it can be taken that he bonafide

pursued a remedy which he thought, was available. Having regard to the principles laid down by the Apex Court in **Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others** (AIR 1987 SC 1353), we feel that the delay is liable to be condoned. Having regard to the nature of the penalty imposed on the petitioner and his contentions against the same, we feel that this was a case where the delay should have been condoned in the interest of justice.

Accordingly, we set aside Exts.P4 and P5. The petition to condone delay filed by the petitioner is allowed. The Tribunal is directed to consider Ext.P2 O.A. on merits, in accordance with law.

The Original Petition is allowed as above.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.
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O.P.NO.37975 of 2001-S
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JUDGMENTt5

24th day of October, 2007